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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,340	11/16/2000	William N. Weaver	ITW-12833	6496
7590	11/14/2003		EXAMINER	
Kevin D Erickson Pauley Peterson Kinne & Fejer 2800 West Higgins Road Suite 365 Hoffman Estates, IL 60195			TRAN, LOUIS B	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 11/14/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/714,340	WEAVER ET AL .
	Examiner Louis B Tran	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 25 September 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-23 is/are pending in the application.
  - 4a) Of the above claim(s) 14-18 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13,19-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

1. This action is in response to applicant's amendment, Paper No. 13, received on 09/25/2003.

### ***Election/Restrictions***

2. This application contains claims 14-18 drawn to an invention nonelected with traverse in Paper No. 4. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 19-23 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant recites "small diameters" and "large diameters" throughout claims 19, 20, and 21, but has not defined what standard determines small or large diameters. The scope of the limitation is unclear.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krogman et al. (5,383,321) in view of Fisher (3,044,230).

Krogman et al. shows the invention substantially as claimed including a system for packaging multiple generally cylindrical containers comprising the steps of providing an applicating machine having a drum 40 with a plurality of jaw pairs 52,54, a transverse distance between the jaw pairs in a closed position adjustable around a circumference of the drum through an adjustable hub of the drum, moving a carrier 12 through an applicating machine 10, the carrier 12 constructed of flexible plastic having a plurality of elongated apertures 18 aligned in transverse ranks which elongated apertures are oriented in a longitudinal direction of the carrier and have a longitudinal pitch between a center of each adjacent elongated aperture (as in Figure 3), the longitudinal pitch having a first length, moving a plurality of containers 14 through the applicating machine, positioning the carrier over the plurality of containers whereby each elongated aperture engages with one of the containers to form a package having a container pitch between a center of adjacent containers approximately equal to a second length (as in claim 1), wherein the carrier further comprises a plurality of relief holes positioned between adjacent longitudinal rows of elongated apertures (as in claim 3), wherein longitudinal extremities of the relief holes overlap end portions of adjacent elongated apertures in the longitudinal direction (as in claim 4) as seen in Figure 3, but does not explicitly show each container of the plurality of containers having a maximum diameter having a second length shorter than the first length spaced apart from an adjacent container by the applicating machine at the first length, and positioning the

carrier over the plurality of containers whereby each elongated aperture engages with one of the containers to form a package having a container pitch between a center of adjacent containers approximately equal to the second length (as in claim 1) and elongated apertures in an unstressed condition prior to application to the plurality of containers, are approximately four to six times longer than wide (as in claim 2).

However, Fisher teaches the use of an overall length of a carrier is reduced after the carrier is positioned over a plurality of containers 32 to form a package as seen in Figures 2 compared to Figure 4 (as in claim 8), each container 32 of the plurality of containers having a maximum diameter having a second length (seen in Figure 4) shorter than the first length (seen in Figure 2 and 1) and each container of the plurality of containers spaced at the first length spaced apart from an adjacent container by the applying machine (as in claim 1) and elongated apertures in an unstressed condition prior to application to the plurality of containers, are approximately four to six times longer than wide seen in Figure 2 of Fisher (as in claim 2) for the purpose of forming a tenacious grip on the containers as indicated in column 2, line 67 of Fisher.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Krogman et al. with a first and second length in order to create a tenacious grip notwithstanding regular wear.

Moreover, the limitation of "a second length at least approximately 10% shorter than the first length" is inherent in the design of Fisher since this limitation is completely dependent on the size of the container being packaged. Structurally, Fisher contains the

same claimed structure as applicant to achieve a second length to be shorter than the first length.

With respect to claim 5, the modified device of Krogman et al. does not explicitly state that the first length is approximately 3.0"; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum first length value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 6, the modified device of Krogman et al. does not explicitly state that the second length is approximately 2.6"; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum second length value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 7, the modified device of Krogman et al. does not explicitly state a first length to second length ratio of 1.15; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum first to second length ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

7. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krogman et al. in view of Fisher.

Krogman et al. discloses the invention substantially as claimed including a plurality of relief holes positioned between adjacent longitudinal rows of elongated apertures seen in Figure 3 (as in claim 10) an applicating system comprising an applicating machine 10, having a drum 40 with a plurality of jaw pairs 52,54, a transverse distance between the jaw pairs in a closed position adjustable around a circumference of the drum through an adjustable hub of the drum, accommodating a plurality of containers 14 spaced at intervals by the applicating machine and the carrier having adjacent longitudinal rows of elongated apertures with a longitudinal pitch between each elongated aperture, seen in Figure 3, having a first length that is greater than the maximum diameter and, after application to the plurality of containers juxtaposed relative to one another, the container pitch between adjacent containers within the carrier is inherently at a second length but does not show a second length less than the first length and approximately equal to the maximum diameter (as in claim 9).

However, Fisher teaches the use of a second length (previously examiner marked Y) less than the first length (previously examiner marked X) and approximately equal to the maximum diameter seen in Figures 4 and 2 for the purpose of forming a tenacious grip on the containers as indicated in column 2, line 67 of Fisher.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Krogman et al. with a first and second length in order to create a tenacious grip notwithstanding regular wear.

Moreover, the limitation of "a second length at least approximately 10% shorter than the first length" is inherent in the design of Fisher since this limitation is completely dependent on the size of the container being packaged. Structurally, Fisher contains the same claimed structure as applicant to achieve a second length to be shorter than the first length.

With respect to claim 10, the modified device of Krogman et al. does not explicitly state that the first length is approximately 3.0"; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum first length value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 12, the modified device of Krogman et al. does not explicitly state that the second length is approximately 2.6"; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum second length value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 13, the modified device of Krogman et al. does not explicitly state a first length to second length ratio of 1.15; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum first to second length ratio, since it has been held that discovering an optimum

value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

8. Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krogman et al.

Krogman et al. discloses the invention substantially as claimed including moving a carrier 12 through the application machine, the carrier constructed of flexible plastic having a plurality of elongated apertures aligned in transverse ranks, which elongated apertures are oriented in a longitudinal direction of the carrier and have a fixed longitudinal pitch between a center of each adjacent elongated aperture independent of a diameter size of the containers, providing the applying machine with a drum 40 having a plurality of jaw pairs 52,54 spaced about a circumference of the drum, with a circumferential distance between a jaw pair and an adjacent jaw pair equal to the fixed longitudinal pitch and a transverse distance between the jaw pairs in a closed position adjustable around the circumference of the drum through an adjustable hub of the drum, moving a plurality of containers through the applying machine, wherein the transverse distance between jaw pairs in the closed position is narrower for the small diameter containers than the transverse distance between jaw pairs for the large diameter containers, and positioning the carrier over the plurality of containers whereby each elongated aperture engages with one of the containers to form a package so that a single applying machine is adapted for use in connection with both small diameter containers and large diameter containers as described in column 5, lines 45-56 but

does not explicitly show wherein for small diameter containers the elongated apertures are narrower than the elongated apertures for large diameter containers.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust a narrower apertures for small diameter containers rather than large diameter containers (claim 19), wherein for small diameter containers the carrier is narrower than the carrier for large diameter containers (as in claim 21), since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954)

It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Therefore, Krogman et al. teaches the adaptability to adjust for small and large diameters as in column 5, lines 45-56.

Krogman et al. discloses the claimed invention except for wherein the fixed longitudinal pitch is approximately 3.0" and the diameter of the containers is approximately 2.6" (claim 22), and wherein the fixed longitudinal pitch is approximately 3.0" and the diameter of the containers is approximately 2.4" (as in claim 23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply specific size containers to a pitch, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 20, Krogman et al. inherently teaches wherein a length of the package is shorter for small diameter containers than the length of the package for large diameters.

***Conclusion***

9. Applicant's remarks have been fully considered but are deemed moot in view of the new grounds of rejection.

Applicant has amended the claims ~~to~~ <sup>to</sup> include a plurality of jaw pairs wherein a transverse distance between the jaw pairs in a closed position is adjustable and urges that the cited art does not show these features. However, Krogman et al. clearly shows jaw pairs that are adjustable and a drum as in the rejection similar to the amended claims.

Again, applicant contends that Fisher does not teach a second length being shorter than the first length. However, the result of the second length being shorter than the first length is entirely dependent on the selection of the container dimensions.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

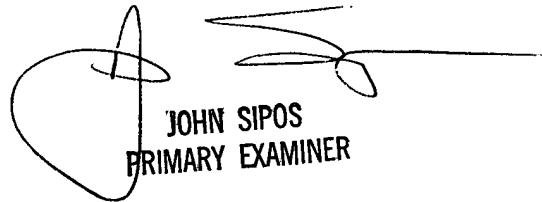
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



JOHN SIPOS  
PRIMARY EXAMINER

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